IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Ram Swaroop Vs. State of Raj.
(D.B. Criminal Appeal No.736/2004)

2. Suresh Kumawat Vs. State of Raj.
(D.B. Criminal Appeal No.783/2004)

D. B. Criminal Appeals under Sec.374(2) Cr.P.C. against the judgment dated 11-6-2004 in Sessions Case No.10/2002 passed by Sh. Arun Kumar Pareek, RHJS, Additional Sessions Judge (Fast Track) No.1, Ajmer.

Date of Judgment: August 01, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamlendra Sihag]
Mr. Hari Bareth]

Mr. M.L. Goyal, Public Prosecutor for the State.
Mr. Onkar Singh Lakhawat, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Praveen, the deceased in this case, in fact was not Praveen (clever). He was so simple that he could not identify his enemy, who came closer and closer to Praveen and became his ally. The boundless greed of ally appeared from his every look, every glance, every stance and every word. The thinking of ally was-

"If in this life
There was no death,
What then would be the charm
In living, and in life?"

Name of ally was Ram Swaroop, who along with one Suresh Kumawat, was indicted before the learned Additional Sessions Judge (Fast Track) No.1, Ajmer for having committed murder of Praveen and both Ram Swaroop and Suresh Kumawat (appellants herein) were convicted and sentenced as under:-

U/s.302 IPC:

Both to suffer imprisonment for life and fine of Rs.200/-, in default to further suffer seven days simple imprisonment.

U/s.201 IPC:

Both to suffer rigorous imprisonment for two years and fine of Rs.100/-, in default to further suffer seven days simple imprisonment.

Sentences were directed to run concurrently.

2. The prosecution story is woven like this:-

Pankaj Patni (Pw.1) handed over a written report (Ex.P-1) on October 1, 1998 at Police Station Srinagar (Ajmer) stating therein that his younger brother Praveen Patni who was running business of Marbel, had left Kishangarh for Delhi, Punjab and Haryana on September 15, 1998 around 8.30 PM in order to recover money from the dealers. After ten days i.e. on September 25, 1998 around 6.30 PM Praveen told the informant on phone that he would reach Kishangarh by 10-11 PM, but he never reached Kishangarh and a report was lodged at Police Station on September 27, 1998 about missing of Praveen. On a vigorous search at Yamuna Nagar and Jalandhar it was revealed that Praveen was seen moving in the company of Ram Swaroop (appellant). Thereafter on coming to know that a dead body was found in a well, the informant and his father was called who identified

the dead body from the under garments found on it and from teeth to be that of Praveen. On that report case under section 302 and 201 IPC was registered and investigation commenced. Necessary memos were drawn and statements of witnesses were recorded. Since appellants were absconded, charge sheet was filed under section 299 CrPC. The appellants could be arrested after three and half years of the incident. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1, Ajmer. Charges under sections 302 and 201 read with 34 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 34 witnesses. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions of learned counsel for the appellants, learned Public Prosecutor and learned counsel for the complainant and with their assistance scanned the entire evidence on record.

4. Dead body recovered from the well was in a decomposition state. Autopsy report (Ex.P-12) of the dead body reads as under:-

> "Fairly built and nourished, rigor mortise absent all over body, whole body swollen up due decomposition, skin paled off from whole body and greenish black which spread over entire abdomen, external genitalia & face and enck, roots of lower limb & upper limb stained purplish, red and swollen through out foul swelling gases coming out of body and maggots seen crawling all over body in lacs, eyes bulged out from eye sockets, decomposition of cornea which become white and mulky and eye lens also decomposed & milky mouth open,

maggots seen in ears, nostrils, mouth and anus tongue swollen and protuted out."

Bruises present in the deep layer of skin in superficial fascia, in the sheeths of muscles in the substance of thyroid cartilage of larynx and trechia rings and cartilage of larynx. There is fracture of greater corner of hyoid bone.

The cause of death in the opinion of Dr. Hemed Bhagtani (Pw.10), who performed autopsy on the dead body, was asphyxia due to throttling.

5. There is no direct evidence to the crime in question and therefore the prosecution case entirely rested on circumstantial evidence. Prosecution must prove each circumstance beyond reasonable doubt and such circumstances must complete the chain; Such proved circumstances must exclude any other reasonable hypothesis of innocence of the accused and they must be pointer to the guilt of the accused. The prosecution has examined number of witnesses to prove these various circumstances and the evidence thereof will be dealt with each circumstance wise.

6. It is alleged by the prosecution that on September 15, 1998 around 8.30 PM Praveen proceeded from Kishangarh to Chandigarh for the recovery of money. Praveen reached Chandigarh and visited Jalandhar, Phagwada, Vaishno Devi and Yamuna Nagar. During this period Ram Swaroop was seen in the company of Praveen and in the presence of Ram Swaroop, large sum of money was collected by Praveen. It also appears from the evidence that on September 24, 1998 Praveen boarded a bus from Yamuna Nagar to Rajasthan. Pankaj (Pw.1) in his deposition stated that Praveen was his brother and he left Kishangarh on September 15, 1998 for Chandigarh. On reaching Chandigarh, Praveen ranged him. Thereafter on September 18, 1998, he received another telephonic call of Praveen from

Jalandhar. During their talk Praveen said that Ram Swaroop Kumawat was sitting with him. On September 23, 1998 Ram Swaroop gave a telephonic call from Ambala and informed him (Pankaj) that he and Praveen decided to come together to Kishangarh. On the night of September 23, Praveen ranged him and informed that he would proceed to Yamuna Nagar on September 24. Thereafter on September 25 around 6.30 PM Praveen informed him on phone that Ram Swaroop was with him and they would reach Kishangarh by 11 PM. Naresh (Pw.34), who was dealing in Marble at Phagwada, deposed that on September 20, 1998 Praveen along with Ram Swaroop came to Phagwada and received two cheques from him and both went together in Maruti Car. Sukhjinder Singh (Pw.11), dealer of Marble, stated that on September 16, 1998 Praveen met him at Panchkula (Chandigarh). They together proceeded to Chandigarh on September 17. After Praveen collected a sum of Rs.13,000/-, they proceeded to Jalandhar. From Jalndhar Praveen hired a taxi for Kapoorthala, Tarantaran and Amritsar. On September 19, Praveen came back and stayed in his house. On September 21, Praveen along with his cousin proceeded to Vaishno Devi. During this period Ram Swaroop constantly inquired on phone about the whereabouts of Praveen. On September 22, Ram Swaroop personally came to his shop to inquire as to whether Praveen came back or not. On September 24, Praveen came back from Vaishno Devi. On coming to know that Ram Swaroop was inquiring about him, Praveen said that he owed a sum of Rs.50,000/- on Ram Swaroop and they together would go to Jaipur as Ram Swaroop made promise to pay a sum of Rs.20,000/- to him. On September 24 while Praveen was sitting in his shop, Ram Swaroop ranged Praveen and it was decided that from Yamuna Nagar they would go together. Vikas (Pw.16) who hailed from Yamuna Nagar deposed that in the evening of September 24, 1998 Praveen

came to his shop and a sum of Rs.35,000/- was paid by him to Praveen. He further stated that while Praveen was sitting in his shop Ram Swaroop gave a telephonic call to Praveen. He then dropped Praveen to Bus stand from where Praveen boarded a bus which was proceeding to Rajasthan. Thereafter on September 25, 1998 Praveen informed him on phone that because of Road-jam he became late and would reach Kishangarh within 2-3 hours. He also informed that Ram Swaroop was with him.

7. It is also alleged by the prosecution that Ram Swaroop reached Jaipur on September 25, 1998 and stayed in Hotel City Center. He checked out the hotel at 8.45 PM. A look at Visitor's Register (Ex.P-13) demonstrates that Ram Swaroop came to the Hotel with one person and column of destination from where they were coming was left blank. Rajendra Prasad Mishra (Pw.12), Manager of the Hotel was examined by the prosecution. It is also the prosecution case that on September 26, 1998 Ram Swaroop reached Ram Mandir Guest House at 6.30 AM and left the Guest House at 7.30 PM. Vinod (Pw.8), Manager Ram Mandir Guest House produced Visitor's Register and deposed that he saw Ram Swaroop's face, there were abrasions on it.

8. It is further alleged by the prosecution that on September 30, 1998 at 7.30 AM Bhoj Raj Chauhan, Ward Panch handed over a written information to SHO Police Station Srinagar that dead body of unknown person was lying in the well near Ajmer Road. On that report proceedings under section 174 CrPC were initiated. Dead body was taken out of the well, Inquest Report was drawn and body was identified by Chhitar Mal Patni to be that of his son Praveen.

9. It also appears that Ram Swaroop disappeared after the incident. He was searched by Pradeep Singh IO (Pw.33), Khan Mohd. (Pw.18) and Amar Chand (Pw.19), but could not be traced. Ultimately charge sheet was filed under section 299 CrPC on November 13, 2000. Ram Swaroop however could be nabbed on February 20, 2002 i.e. after about three and half years vide arrest memo (Ex.P-31)

10. The first and the most important circumstance that prosecution has to prove is whether the dead body was identified beyond reasonable doubt to be that of Praveen. As regards the identity of the dead body, the learned trial court accepted the evidence of Chhitar Mal (Pw.5), father of Praveen. This ocular evidence finds corroboration from the clothes found on dead body. The trial court succinctly discussed the evidence of Chhitar Mal and found that same to be trustworthy.

11. Learned counsel for the appellant took us through the Inquest Report (Ex.P-4) of the dead body and canvassed that the dead body was of bald headed man whereas from the evidence of Pankaj it is evident that Praveen had hair on his head. Thus according to learned counsel, the prosecution could not establish that the dead body was to be that of Praveen. In order to appreciate this contention we have closely scrutinised the material on record. It appears that two packets marked A and B were sent by Superintendent Police Ajmer through special messenger to FSL. Packet A contained skull of dead body and packet B contained Photograph of Praveen. Report received from FSL (Ex.P-21) reads as under:-

> "Result of Examination
> Carnioscopic characteristic in ex.No.1 were studied in comparion with cephaloscopic manifestations of facial photo of the adult

male ex.no.2.

Since mandible is missing all the land marks seen in photograph could not be compared with the skull. However all the available anthroposcopic characters on skull (ex.no.1) correlated well with those seen in the photograph (ex.no.2)

Superimposition was done by me at Forensic Science Laboratory. Chennai. The image of the skull (Ex.no.1) was superimposed on the image of the facial photo of

Result of Examination

The male adult (ex.no.2) using video superimposition device. The available anthroscopic device. The available anthroscopic land marks in skull (Ex.no.1) and those in the photo (ex.no.2) were found to be in fair congruence.

Since mandible was absent complete fitness of photo and skull could not be observed.

Opinion:

The skull (ex.no.1) could possibly have belonged to the male (adult) individual seen in the photo (ex.no.2)"

12. We do not see any reason to disbelieve the opinion of FSL. Since the dead body was in a highly decomposed position and the skin peeled off from whole body, it was quite possible that hair from head would also be peeled off. The Forensic Science Laboratory after examination of skull and photograph opined that skull could possibly have belonged to male adult individual seen in the photo. We do not find any material which could discredit this evidence.

13. Learned counsel for the appellant then contended that there was unexplained delay in sending the FIR to the court of Magistrate and it creates doubt about the prosecution story. Learned counsel took us through the FIR (Ex.P-2), which goes to show that Constable Madan Mohan submitted FIR in the court of Judicial Magistrate Ajmer on October 5, 1998.

In support of this contention learned counsel placed reliance on Thanedar Singh Vs. State of Madhya Pradesh [2002 RCC (SC) 146], wherein it was indicated that unexplained delay in sending FIR to the court of Magistrate gives presumption that it was ante-timed. In Arjun Marik Vs. State of Bihar (1994 SCC (Cri) 1551), it was held that delay in sending FIR leads to the conclusion that the FIR had been recorded much later than one as shown in the said documents.

14. It is no doubt true that the FIR could not be sent forthwith to the court of Magistrate but in the facts and circumstances of the case the delay in sending the FIR is not fatal and it cannot be said that the allegations in the FIR are unworthy of credence. Since the Investigating Officer was not cross examined by the appellants on the explanation of delay we see no ground to disbelieve the FIR. In State of U.P. Vs. Nahar Singh (1998)3 SCC 561, the Apex Court observed that in the absence of cross examination on the explanation of delay, the evidence of witness remained unchallenged and it ought to have been believed.

15. It was next contended by learned counsel for the appellants that time gap between the point of time when appellant Ram Swaroop and deceased were last seen alive and deceased was found dead, is so large that possibility of any person other than Ram Swaroop being the author of the crime becomes possible. In order to consider this submission we have scanned the ocular and documentary evidence. The factual situation emerges from the evidence may be summarized thus:-

(i) Appellant Ram Swaroop and Praveen left Yamuna Nagar on

September 24, 1998 in the evening.

(ii) On September 25, 1998 Praveen informed Vikas (Pw.16) that because of traffic-jam he became late. He also informed that Ram Swaroop was with him. On the same day around 6.30 PM Praveen intimated his brother Pankaj (Pw.1) that Ram Swaroop was with him and they would reach Kishangarh by 11 PM.

(iii) Ram Swaroop stayed in Hotel City Centre Jaipur on September 25, 1998 along with one person. He checked out Hotel at 8.45 PM on the said day. On September 26, 1998 at 6.30 AM he reached Ram Mandir Guest House and checked out the Guest House at 7.30 PM.

(iv) Ram Swaroop did not give any explanation as to who was that person with whom he stayed in Hotel City Centre Jaipur on September 25, 1998 till 8.45 PM. He also did not explain as to where had he been from 8.45 PM of September 25 till 6.30 AM of September 26, 1998.

(v) Post Mortem on the dead body was performed on October 1, 1998 and as per post mortem report (Ex.P-12) probable time since death was 4 to 6 days. A look at the post mortem report further reveals that due to membranes decomposed brain matter soft and pulpy forming liquid mass, scalp was easily pulled out.

(vi) Immediately after the incident Ram Swaroop absconded and could be arrested on February 20, 2002 i.e. after about three and half years.

(vii) Maruti Car (white colour) got recovered from the house of Ram Swaroop in his absence on October 3, 1998 vide recovery

memo (Ex.P-11). It did not bear registration number.

16. Before analysing the submissions of learned counsel, we deem it appropriate to have a look on the judicial pronouncements which have been referred by learned counsel.

17. In Palvinder Kaur v. The State of Punjab (AIR 1952 SC 354) the Apex Court indicated as under:- (paras 13 and 19)

> "The court should safeguard itself against the danger of basing its conclusion on suspicious however strong they may be and the necessity for adopting that caution becomes absolute in a case in which the situation of the parties, the belated investigation of the case and the sensation it had created demands the same."
>
> "Where there is no direct evidence and the circumstantial evidence answers the questions, essential to the proof of the offence only vaguely and indefinitely and is not incompatible with the theory of the innocence of the accused there is no evidence on which the accused can be found guilty."

18. In Sarwan Singh v. State of Punjab (AIR 1957 SC 637) the Apex Court observed thus:- (para 12)

> "It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but when `may be true' and `must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted."

19. In Ramreddy Rajshekhanna Reddy v. State of Andhra Pradesh [2006(3) Supreme 175] the Apex Court held as under:-

(Paras 26 and 27)

> "It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence."
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> "The last seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration."

20. In Thimma v. State of Mysore (AIR 1971 SC 1871) their Lordships of the Supreme Court observed as under:-

(Paras 10 & 11)

> "Reliance on behalf of the prosecution was also placed on the information given by the appellant which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Indian Evidence Act. This information, it was argued also lends support to the appellant's guilt. It appears to us that when PW.4 was suspected of complicity in this offence he would in all probability have disclosed to the police the existence of the dead body and the other articles at the place

where they were actually found. Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and Courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Section 25 and 26 of the Indian Evidence Act is not whittled down by the mere manipulation of the record of the case diary. It would in the circumstances be somewhat unsafe to rely on this information for proving the appellant's guilt. We are accordingly disinclined to take into consideration this statement.

"The trial court and the High Court have also been influenced by the fact that the appellant had absconded after September 1, 1967 when the police got suspicious of his complicity in this offence. It is true that the appellant did make himself scarce with effect from September 1, 1967 till he was arrested on September 5, 1967 and this conduct is relevant under section 8 of the Indian Evidence Act and might well be indicative to some extent of guilty mind. But this is not the only conclusion to which it must lead the Court. Even innocent persons may, when suspected of grave crimes, be tempted to evade arrest; such is the instinct of self preservation in an average human being. We are, therefore, not inclined to attach much significance to this conduct on the peculiar facts and circumstances of this case."

21. In Rahman v. State of UP (AIR 1972 SC 110) the Apex Court indicated held as under:- (Para 21)

"It is true that the appellant was concealing himself for nearly a month though he must have known that he was wanted by the Police and he left his wife to face the situation alone. But absconding by itself is not conclusive either of guilt or of a guilty conscience. For a person may abscond on account of fear of being involved in the offence or for any other allied reason.

22. Although learned counsel for the appellants has done a lot of

hard work in marshalling the facts and made attempt to cause dent in the structure erected by the prosecution, we still find ourselves unmoved. We find no merit in the submissions of learned counsel because of sufficient number of very significant features of evidence on record noticed by us. Having reassessed the evidence for ourselves, we find that the prosecution has proved each circumstance against appellant Ram Swaroop beyond reasonable doubt so as to complete the chain. The proved circumstances excluded any other reasonable hypothesis of innocence of the appellant Ram Swaroop and they are pointer to the guilt of the appellant Ram Swaroop.

23. In Amrik Singh Vs. State of Rajasthan (1993 CrLR (SC) 768) Hon'ble Supreme Court indicated that absconding by itself may not be of any conclusive evidentiary value but it is a circumstance which cannot be ignored while considering other evidence connecting the accused with the crime. Where the other evidence is convincing and reliable absconding assumes importance.

24. In the case on hand Praveen, the deceased, and Ram Swaroop (appellant) both disappeared on September 25, 1998. On September 30, 1998 dead body of Praveen got recovered from a well, whereas appellant left his house, car and marble business and absconded. Evidence adduced by the prosecution that Praveen was last seen in the company of appellant Ram Swaroop, is convincing and reliable. Thus evidence of absconding of appellant Ram Swaroop assumes importance.

25. Even if we ignore the evidence of recovery of incriminating articles at the instance of appellant Ram Swaroop, we find that the chain of

circumstances is not snapped and learned trial court rightly held appellant Ram Swaroop guilty.

26. Coming to the case of appellant Suresh we notice that only evidence against him was that he joined appellant Ram Swaroop in the Guest House on September 26, 1998, thereafter he too disappeared and could be nabbed only on February 20, 2002. After his arrest wrist watch, belonging to the deceased, got recovered at his instance. The evidence adduced by the prosecution against appellant Suresh is very feeble and we do not attach much importance to the recovery of wrist watch effected after three and half years. Since there is no evidence on record to show that appellant Suresh was last seen in the company of Praveen, evidence of absconding adduced against him does not assume importance and we grant benefit of doubt to appellant Suresh.

27. For these reasons, we dispose of the instant appeals in the following terms:-

(i) Appeal of Ram Swaroop being devoid of merit stands dismissed and his conviction and sentence under section 302 and 201 IPC are maintained.

(ii) We allow the appeal of appellant Suresh Kumawat and acquit him of the charges under sections 302 and 201 IPC. Appellant Suresh Kumawat is on bail, he need not surrender and his bail bonds stand discharged.

(iii) Impugned judgment of learned trial Judge stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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